IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1407 OF 2002
WITH
CIVIL APPLICATION NO. 4856 OF 2002
IN
FIRST APPEAL NO.1407 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

HATHIBHAI SENGHABHAI RUPPURA

Appearance:
1. First Appeal No. 1407 of 2002
MS MONALI H BHATT for Petitioner No. 1
MR HIMANSU M PADHYA for Respondents.

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE H.H.MEHTA

Date of decision: 17/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

1. Admit. Service of notice of admission is waived by Mr. H.M. Padhya learned advocate for and on behalf of the respondents. In view of the peculiar facts of the case and short question involved in the case as well as upon joint request of the learned advocates for the parties, we have taken up this appeal today, for final hearing.

2. The short question which requires to be determined and adjudicated upon is as to whether the amount of compensation awarded by the Workman Compensation Commissioner under the Workmen Compensation Act, 1923 is required to be slashed from the amount of compensation awarded by the Motor Accident Claims Tribunal (Main), District Banaskantha, Palanpur in the case of fatal injuries on account of the vehicular accident, for which as such there is consensus even amongst the lawyers appearing for the parties. Therefore, the amount which has been awarded under Workmen Compensation Act, 1923 by the Workmen Commissioner for the death of the employee is required to be slashed down from the amount of compensation due and payable under the award of the Motor Accident Claims Tribunal.

3. The appellant - Gujarat State Road Transport Corporation (GSRTC) deposited the amount due and payable under the Workmen Compensation Act, 1923 in view of the serious and fatal road accident which unfortunately cut short cruelly the life of Manilal Hathibhai Ruppura. The amount deposited before the Workmen Compensation Commissioner sought to be withdrawn by the respondents who are heirs and legal representatives of the deceased victim of the fatal accident and after hearing both the parties proportionately the amount deposited by the employer and master came to be granted appropriately by making apportionment. Therefore, it is an admitted fact that the respondents have simply withdrawn the amount of compensation deposited by the employer and as such by not initiating legal battle for the amount of compensation under the Workmen Compensation Act, 1923 against the GSRTC.

4. Whereas, the heirs and legal representatives by invoking the provisions of Section 163-A of the Motor Vehicles Act, 1988 came to be successfully awarded by the Motor Accident Claims Tribunal (Main), District Banaskantha, Palanpur consolidated sum of Rs.3,27,000/-

under both the heads on account of unfortunate premature demise of the breadwinner of the family by the award dated 11-9-2001. Whereas the order under the Workmen Compensation Act came to be passed on 29-5-2000. In view of these facts, obviously one cannot be allowed to have best of both. Since, it cannot be said that the respondents who are heirs and legal representatives of the victim of the fatal road accident had opted for the compensation under the Workmen Compensation Act, 1923. Nevertheless, the amount paid under the Workmen Compensation Act has to be slashed down from the amount of compensation due and payable under the award of the Motor Accident Claims Tribunal (Main), Banaskantha District, Palanpur. Therefore, the respondents would be entitled to the amount of Rs. 3,27,000/- minus Rs.1,69,440/- being amount of compensation awarded under the Workmen Compensation Act, 1923 = Rs.1,57,560/- on being moved before the Tribunal concerned. The amount shall be proportionately apportioned on the basis of the celebrated principles and criteria on being moved by the Tribunal concerned.

5. In the result, the appeal to that extent needs to be allowed. Accordingly, this appeal is allowed to the aforesaid extent, with no order as to costs.

6. In view of the aforesaid order in the main appeal, Civil Application No. 4856 of 2002 does not survive and accordingly the same shall stand disposed of.

(J.N. Bhatt,J.)

(H.H. Mehta, J.)

/JVSatwara/